Harborview Electric Construction Co. *and* International Brotherhood of Electrical Workers, Local 488. Case 34–CA–6599

October 17, 1994

DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed by the Union on May 26, 1994,[1] the General Counsel of the National Labor Relations Board issued a complaint on July 8 against Harborview Electric Construction Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Copies of the charge and complaint were properly served on the Respondent. On August 10, the Respondent filed with the General Counsel a letter dated August 9, styled ''Respondent[']s answer to complaint.'' On August 17, the General Counsel filed with the Board a Motion for Summary Judgment with exhibits attached, asserting, inter alia, that the Respondent has failed to file an answer to the complaint which satisfies Section 102.20 of the Board's Rules and Regulations.[2] On August 19, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 16, the Respondent filed with the Board a response (dated September 6) to the Notice to Show Cause. On September 23, the General Counsel filed with the Board a statement (dated September 15) in support of the Motion for Summary judgment.[3]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Procedural History

The July 8 complaint alleges, inter alia, that about August 27, 1987, the Respondent, an employer engaged in the building and construction industry, ''granted recognition to the Union and since said date the Union has been recognized as such representative by Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act.''[4]

The complaint also alleges that such recognition has been embodied in successive collective-bargaining agreements, the most recent of which were effective for the period March 1, 1993, to February 28, 1994, and March 1, 1994, to February 28, 1995. The complaint further alleges that for the period from August 27, 1987, through February 28, 1995, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit alleged as appropriate elsewhere in the complaint.

Finally, the complaint alleges that since about May 2, the Respondent has been in violation of Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the Union with certain requested information which is alleged in the complaint to be necessary for and relevant to the Union's performance of its duties as the alleged exclusive collective-bargaining representative of the unit employees.

The Respondent did not file an answer to the July 8 complaint within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations. On August 4, the General Counsel notified the Respondent that an answer to the complaint had not been received. In this notification, the General Counsel set forth the provisions of Section 102.20 of the Board's Rules and Regulations, and informed the Respondent that if no answer was filed by August 12, the General Counsel would seek summary judgment based on the Respondent's failure to respond to all the allegations set forth in the complaint.

The Respondent's president, Mark Krom, acting pro se, filed a letter answer to the complaint on August 10, in which he asserts in pertinent part that ''my association with the IBEW L.U. #488 has been terminated per the requirements specified in the contract.''

The General Counsel filed a Motion for Summary Judgment on August 17, in which he asserts that the Respondent's August 10 letter is not a sufficient answer to the complaint under Section 102.20 of the Board's Rules and Regulations, supra. The General Counsel thus contends that all allegations of the complaint that the Respondent has failed to answer should be deemed to be admitted to be true, and that the Respondent should consequently be found to have violated Section 8(a)(1) and (5) of the Act.

The Respondent filed a response to the Notice to Show Cause on September 16, in which Krom asserts, in pertinent part, that he ''had fully complied with all the contractual requirements necessary to end my asso-

[1] All dates are 1994 unless stated otherwise.

[2] Sec. 102.20 of the Rules and Regulations states, in full:

> The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

[3] It does not appear that the Respondent's August 10 letter answer to the complaint was served on the Charging Party, as required by Sec. 102.21 of the Board's Rules and Regulations.

[4] See Sec. 8(f)(1) of the Act.

ciation with the Union as of January 1, 1994,'' and that he ''legally completed all my contractual requirements to end my association with the Union.''

The General Counsel filed a statement in support of his Motion for Summary Judgment on September 23, in which, inter alia, he reiterates that the Respondent's August 10 letter answer to the complaint fails to satisfy the requirements of Section 102.20 of the Board's Rules and Regulations.

Discussion

The Board, having duly considered the matter, finds that summary judgment is not appropriate here. Although the Respondent's August 10 letter answer to the complaint is not in a form that comports with Section 102.20 of the Board's Rules and Regulations, it can reasonably be construed as denying the complaint allegations that the Union has been the limited exclusive collective-bargaining representative of the Respondent's unit employees during the time of the refusal to provide the Union with certain requested information.[5] Indeed, the Respondent's letter answer plainly states that its 8(f) relationship with the Union ''has been terminated per the requirements specified in the contract.'' The existence of a collective-bargaining relationship during the relevant time, effectively denied by the Respondent, is material to the resolution of the underlying unfair labor practice issue.

The Respondent's letter answer does not address most of the facts alleged in the complaint. However, even if those unaddressed facts were deemed admitted, the Respondent's effective denials of the complaint allegations discussed above have raised substantial and material issues of fact warranting a hearing before an administrative law judge.[6]

Under the circumstances, because the Respondent's letter answer was filed without benefit of counsel, and also because it constitutes a sufficiently clear denial of the allegations regarding the existence of a collective-bargaining relationship during the material time period, we will not preclude a determination on the merits simply because of the Respondent's failure to comply with all of our procedural rules.[7]

Based on all the above considerations, we conclude that the General Counsel's Motion for Summary Judgment should be denied.

ORDER

The General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 34 for further appropriate action.

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[5] See *Carpentry Contractors*, 314 NLRB 824 (1994); *Tri-Way Security*, 310 NLRB 1222 (1993).

[6] See *Carpentry Contractors*, supra.

[7] Id. and cases cited there.

Although, as noted above, it does not appear that the Respondent's letter answer was served on the Charging Party, we again note the pro se basis on which the Respondent was proceeding. Id.